

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

TUESDAY, THE 10TH OCTOBER 2006 / 18TH ASWINA 1928

CRL.A.No. 1076 of 2002()

CRIME NO.137/1999 OF KUMBALA POLICE STATION, KASARAGOD DISTRICT
SC.620/1999 of ADDL.SESIONS COURT (ADHOC), KASARAGOD
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APPELLANT: ACCUSED:

JAYANTHA, S/O. KRISHNA VELICHAPPADA
COOLY, PACHALAMPALLA, ICHILANGOD VILLAGE,
KASARAGOD DISTRICT.

BY ADV. SRI.T.G.RAJENDRAN
A.P.CHANDRASEKHARAN

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
THE STATE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI.K.S.SIVAKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 10/10/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J.M.JAMES, J.

Crl.A. No. 1076 of 2002 (C)

Dated this the 10th day of October, 2006

J U D G M E N T

The appellant was convicted and sentenced to undergo rigorous imprisonment for three years and pay a fine of Rs.1 lakh and in the event of default of the payment of the fine, to undergo rigorous imprisonment for a further period of one year, for the offence punishable under Section 55(a) of the Abkari Act, in Crime No.137/1999 of Kumbala Police Station, Kasaragod District.

2. The prosecution case in brief is that, on 24/06/1999, 48 bottles of Indian Made Foreign Liquor, each bottle containing 375 ml., were seized from the possession of the appellant, by PW.3. He took 2 bottles as samples, for sending it for chemical examination and obtained Exhibit P4 chemical analysis report, which revealed that the samples sent for chemical analysis, contained ethyle alcohol of 41.31% by volume. Therefore, the appellant was proceeded against, as per the law.

3. The prosecution examined three witnesses and

marked four documents. M.O.1 series -- 46 bottles of Indian Made Foreign Liquor of 375 ml each, were also identified. On appreciation of the evidence so adduced, the learned Additional Sessions Judge, convicted and sentenced the appellant, as stated above. Hence, this appeal.

4. The learned counsel for the appellant submitted that the appellant is entitled to keep 1.5 litres of Indian Made Foreign Liquor and the samples that have been sent for chemical analysis were only from two bottles of 375 ml each. Thus, the prosecution prove that the appellant was in possession of 750 ml., which is within the permitted limit. As samples from the remaining bottles were not collected and send for chemical analysis, it is against the legal position laid down by this Court, in **Krishnankutty vs. State of Kerala** [2005(3) KLT 568].

5. The evidence of PW.3, the detecting officer, reveal that he had though seized all the 48 bottles from the possession of the appellant, he took only two bottles of 375 ml each, as sample and send the same for chemical analysis. Exhibit P4 chemical analysis report shows that two sealed 375

ml bottles, each containing 375 ml of I.M.F.L, were received by the analyst, and on analysis, it was found that it contained 41.31% by volume of ethyle alcohol.

6. Therefore, I agree with the arguments advanced by the learned counsel for the appellant, that the prosecution could prove that the appellant was in possession of only two bottles, 750 ml I.M.F.L. The appellant was permitted to keep 1.5 litres of I.M.F.L, as per the notification that was prevalent at that time.

7. In such situation, I find that the Additional Sessions Judge, Adhoc I, Kasaragod, was not legally correct in entering into a finding that 48 bottles of I.M.F.L, each bottle containing 375 ml, had been seized from the possession of the appellant, and the contraband seized were of I.M.F.L. Therefore, I hold that the conviction entered by the court below is, against the law.

8. In view of the above discussions, I find that the conviction as well as the sentence will have to be set aside and, I do so. The appeal in the result is allowed and the appellant-

accused in S.C.No.620/1999 on the file of Additional Sessions Court, Adhoc I, Kasaragod, is acquitted of the charge against him. He is set at liberty and his bail bond is cancelled.

(J.M.JAMES)
Judge

ms

J.M.JAMES, J.

Crl.A. No. 1076 of 2002(C)

J U D G M E N T

10th October, 2006